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No. 80-2172.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1980.

THE SEEKONK WATER DISTRICT,
PETITIONER,

v.

HERITAGE HOMES OF ATTLEBORO, INC.,
RESPONDENT.

Brief in Opposition to Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit.

STEPHEN D. CLAPP,
ARMSTRONG, POLLIS AND CLAPP,
52 North Washington Street,
North Attleborough, Massachusetts 02760.
(617) 695-3554

ADDISON C. GETCHELL & SON, INC. - THE LAWYERS' PRINTER - BOSTON

Questions Presented.

1. Whether a municipal corporation may be held liable for punitive damages in a civil rights action under 42 U.S.C. §§ 1981, 1983.

2. Whether a private corporation, which itself "has no racial identity," *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 263 (1977), has standing under 42 U.S.C. §§ 1981, 1983 to sue based on racial discrimination directed at hypothetical potential purchasers of homes sold by the corporation.

3. Whether a municipal corporation can be held liable for damages under *Monell v. New York City Dept. of Social Services*, 436 U.S. 658 (1978), based solely on the actions and motivation of voters acting directly through a town meeting to decide a public issue.

4. Whether the *Monell* decision, which overruled *Monroe v. Pape*, 365 U.S. 167 (1961), applies retroactively.

Parties Below.

The parties below are as stated by the petitioner.

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Opinions Below.

The opinions below are as stated by the petitioner.

Jurisdiction.

The jurisdiction is as stated by the petitioner with the exception that jurisdiction in the district court was founded on 28 U.S.C. § 1331 as well as § 1343.

Constitutional Provisions and Statutes Involved.

United States Constitution, Thirteenth Amendment;
United States Constitution, Fourteenth Amendment;
42 U.S.C. § 1981;

42 U.S.C. § 1983;
Mass. Acts of 1945, c. 381.

All are reproduced in the Appendix to this Brief in Opposition to Petition for a Writ of Certiorari.

Statement of the Case.

Respondent, Heritage Homes of Attleboro, Inc., is a Massachusetts corporation engaged in the development of low priced single family housing. In early 1976, Heritage became interested in purchasing and developing a 150 acre parcel of land in Seekonk, Massachusetts. The land abutted the boundary of the Seekonk Water District, a municipal corporation created by a special act of the Massachusetts legislature and consisting of the inhabitants of the town of Seekonk liable to taxation who reside within specified geographic limits. It was created for the purpose of supplying the inhabitants with water for fire protection, domestic and other purposes. Only part of the town is included within the water district; however, land within the town abutting on the district may be included upon the petition of its owner and the majority vote of the water district's voters present at a duly called meeting.

Before purchasing the real estate, Heritage inquired of the water district's officials as to the possibility of obtaining water for its proposed development. The officials informed Heritage that the chances of inclusion were very good; that the application procedure was just a formality; that the water district already had plans to extend its boundaries past that area to straighten the boundary and to improve the distribution system; and that there was no shortage of water in the district. Heritage's development of the land would relieve the water district of approximately $20,000 it would otherwise have to spend to put pipes through the area.

In April, 1976, Heritage purchased the land which had street frontage of 3,900 ft. on four streets. There were eight

building lots already laid out and twenty-two more frontage lots could have been laid out and built upon without subdivision approval. In addition, there were potentially 114 back lots requiring subdivision approval. In 1976, the town of Seekonk had a population of 13,500. It was predominantly white with only five to fifteen black residents. The adjoining city of East Providence, Rhode Island had a black population which was close to forty percent.

Shortly after the purchase, Heritage applied for inclusion and was told by the water district superintendent that the seven lots fronting on Miller Street, where water district mains were already in existence, could tap into the system even though they were not located within the water district. This was in keeping with what the water district had permitted other owners of lots abutting the water district in the same area to do in the past. The superintendent informed Heritage that, as to the other lots, formal inclusion would be necessary.

Heritage then applied for building permits and on May 1, 1976, began performing percolation tests required for the approval of on-site septic systems for the thirty frontage lots.

Abutting the Heritage parcel, but within the water district boundary, was an existing ten to twelve year old development known as Fieldwood consisting of approximately 100 houses. About the time the percolation tests were being performed, residents of Fieldwood began calling the building inspector to complain that the Heritage development would be low income federally subsidized housing and would bring in blacks and Hispanics. The callers asked what he was going to do to slow down the development. The town Selectmen also received a great many calls from Fieldwood people complaining that Heritage's development would bring undesirable people into town.

In the past, Heritage had built a low priced housing development in a neighboring white community and had sold houses in that development to blacks. The Selectmen asked Heritage not to build the type of houses it had built in the neighboring community because that type of house would bring in black people who were not wanted in Seekonk. One of the Selectmen said that they did not want all of the blacks and Puerto Ricans in East Providence moving into the neighborhood. At about this time, and continuing for a five week period, Heritage received malicious telephone calls theatening to burn the houses as fast as they were built.

On May 11, 1976, there was a duly called water district meeting. One of the warrant articles was Heritage's petition for inclusion. The meeting was attended by a larger crowd than usual, with eighty to eighty-five water district voters present. In conversations, the voters expressed concern that the development would bring in black people from nearby East Providence and that this would devalue their homes. During the floor discussion on the article it became apparent that many of those present had come for the sole purpose of defeating it. Speakers referred to the proposed houses as low income housing and shacks and one speaker said the houses would bring blacks into the area. Immediately after defeating the Heritage article by a vote of sixty-six to eight, forty-three of the voters left the meeting and went to a concurrent planning board meeting considering a routine building permit application filed by Heritage. Among the people who came from the water district meeting to oppose Heritage at the planning board was an organized group of Fieldwood residents. One of the voters from the water district meeting exclaimed to others present at the planning board, "if we don't stop this here tonight . . . you will have all the niggers in town." The meeting was crowded beyond capacity and there was difficulty keeping order.

After the defeat at the water district meeting, Heritage began construction on the seven lots which did not need formal inclusion within the water district. Within three or four weeks the houses were substantially completed and buyers had been found for all of them. At this time, the water district superintendent informed Heritage that his earlier representation that these houses could tap into the existing main in the street was a mistake; the seven houses could not have water. Heritage applied for inclusion three more times and the voters denied inclusion each time.

After the third defeat, Heritage explored for water in an attempt to build its own water supply. Not finding a sufficient source on the property to serve the entire development, Heritage was forced to drill individual wells for each of the thirty frontage lots. The lack of access to the municipal water system resulted in a two year delay and increased development costs for the thirty frontage lots. The lack of municipal water also prevented Heritage from obtaining the necessary subdivision approval from the planning board, thereby completely preventing the development of 114 of the proposed houses.

In all, Heritage was only able to develop thirty of the lots. The water district's wrongful conduct delayed the sales and increased the cost of development. The thirty houses were sold at a gross price which was $248,000 more than the price originally projected. In spite of the actions of the water district voters, Heritage sold one of the thirty houses to a black family.

Heritage brought this civil action alleging that the voters of the Seekonk Water District rejected inclusion of its intended housing development to punish Heritage for its demonstrated willingness to sell to blacks and to keep blacks out of the water district. Heritage sought damages and injunctive relief under 42 U.S.C. §§ 1981, 1983, 1985(3), the Fourteenth

Amendment and the Thirteenth Amendment. The district court dismissed each of Heritage's claims for failure to state a cause of action ruling: as to the § 1983 claim that the water district was not a "person" and therefore was immune from suit; as to the § 1985(3) claim that Heritage was not an actual member of the racial minority discriminated against; as to the Fourteenth Amendment claim that the "municipal involvement" of the water district was not sufficient to give it liability, and as to the § 1981 claim that Heritage was not a member of a class traditionally protected by § 1981 and that the water district's conduct did not come within the criteria required by the intervening case of *Monell v. New York City Dept. of Social Services*, 436 U.S. 658 (1978).

The court of appeals reversed the dismissal of Heritage's §§ 1981 and 1983 claims ruling that there was an Article III "case-or-controversy" within the reasoning of *Warth v. Seldin*, 422 U.S. 490, 517 (1975) in that the denial caused Heritage to suffer economic injury and the controversy remained viable because the denial continued to block a then current construction project. Relying on *Sullivan v. Little Hunting Park, Inc.*, 396 U.S. 229, 237 (1969) the court of appeals ruled that § 1981 implied a right of action in Heritage even though it was not a member of the racial class protected by the statute because the racially discriminatory acts of the water district interfered with Heritage's right to contract with blacks and the racially discriminatory acts punished Heritage for making contracts with blacks. In ruling that § 1983 implied a right of action in Heritage, the court of appeals relied upon Mr. Justice Harlan's words in *Adickes v. Kress & Co.*, 398 U.S. 144, 150-152 (1970).

> Few principles of law are more firmly stitched into our constitutional fabric than the proposition that a State must not discriminate against a person because of his race or the race of his companions or in any way act to compel or encourage racial segregation.

The court of appeals ruled also that the water district's liability could be premised on a vote of its members consistent with *Monell v. New York City Dept. of Social Services*, 436 U.S. 658 (1978) because the statute gives the voters the authority to pass upon petitions for inclusion and makes their decision the official policy of the water district. It was found unnecessary to decide whether or not a claim was stated under § 1985(3) because Heritage had dropped all of the individual co-conspirators as defendants from the suit and it was observed that the benefit of a § 1985(3) claim was its ability to reach the conduct of private individuals. It also ruled that Heritage's Fourteenth Amendment claim would be fully litigated and remedied under the § 1983 claims.

The case was remanded to the district court where it was tried without a jury. After a two day trial the district court found:

> . . . based on *overwhelming* evidence that the water district's refusal to include plaintiff's land within its boundaries was motivated solely by racial considerations. In making this finding I am particularly mindful that in the thirty-two year history of the District no other applicant ever has been refused admission and that all the factors usually considered important in making such a determination favored a decision opposite to the one reached by the water district. Petitioner's Appendix p. 39a.

The district court ruled that although the water district's wrongful acts increased Heritage's development costs due to the additional costs of drilling wells, paying interest on construction loans and paying taxes on the completed but waterless houses, Heritage had raised its prices and "passed its losses on to the buyers of its homes" and had therefore suffered no compensable damage. The district court did award $100,000.00 in punitive damages in order to "discourage the

obviously racially discriminatory policy" of the water district and "as a warning to others." The district court also ordered the water district to extend its boundaries so as to include Heritage's land. Petitioner's Appendix p. 40a.

The court of appeals rejected the district court's "passing on losses" analysis and directed the entry of a compensatory damage judgment in the amount of the extra cost Heritage incurred in drilling individual wells for the thirty houses over what it would have incurred to connect to the water district. By a divided vote it affirmed the punitive damages award. The majority opinion found that "the odious character of the discrimination in this case is a sufficiently 'aggravating circumstance[ ]' . . . to support the award of punitive damages" and that the record showed the water district to have "engaged in a deliberate and remarkably overt display of racial discrimination." Petitioner's Appendix p. 44a. Although concerned that courts should "not too quickly levy punitive damages against public bodies," the majority ruled that in this case, the award was justified by the necessity for avoiding the anomalous result of punishing only "minions who act beyond the confines of council rooms" and allowing "blatant discrimination" to go unpunished where there is "open participation." Petitioner's Appendix p. 45a.

Summary of Argument.

This Court's decision of the case of *City of Newport v. Fact Concerts, Inc.*, __ U.S. __, 49 U.S.L.W. 4860 (1981) has put to rest the important issues sought to be raised by the petitioner. *Newport*, on the other hand, does not reach the peculiar facts of this case involving direct taxpayer abuse of constitutional rights, an occurrence not contemplated by that decision. Liability for punitive damages in this case is not inconsistent with the 19th century case law relied upon in that decision. The legislative history of § 1981 is different from

that of § 1983 in two significant ways. First, when § 1981's predecessor was enacted there was case law permitting municipal liability for punitive damages. Second, § 1981's predecessor contemplated enforcement by the strongest means available. The probability of reoccurrence is so slight that the issue of direct taxpayer action is of minor relative importance. The precise standing issue sought to be raised was not raised or considered below. Standing is controlled by facts in the record which the petitioner has ignored. The court of appeals' application of *Monell v. New York City Dept. of Social Services*, 436 U.S. 658 (1978) was correct because in violating Heritage's constitutional rights, the water district voters were exercising corporate power given to them by the incorporating statute. If any First Amendment or "speech and debate" immunity applies to the voters' action it is personal to the voters and, as such, constitutes all the more reason for municipal punitive damage liability as the only other effective means of deterrence. The question of whether or not *Monell* should be non-retroactive cannot be reached because the water district also had liability under § 1981 at the time of the violations.

Reasons for Denying the Writ.

Certiorari should be denied because the issues of "great public significance" sought to be raised by the petitioner have been decided by this Court in the case of *City of Newport v. Fact Concerts, Inc.*, __ U.S. __, 49 U.S.L.W. 4860 (1981). The *Newport* decision did not reach the peculiar and unusual facts of this case with the result that the issues now raised by this case are of only very limited and isolated significance beyond the private interests of the litigants. Because relief was based on § 1981 as well as § 1983 and because the complaint contained the additional grounds of the Thirteenth and Four-

teenth Amendments, review of the limited issues will be disproportionately complex.

The majority decision in *Newport* found "that considerations of history and policy do not support exposing a municipality to punitive damages for the bad faith actions of its officials" and for this reason held "that a municipality is immune from punitive damages under 42 U.S.C. § 1983." *City of Newport v. Fact Concerts, Inc.*, 49 U.S.L.W. at 4866. Because the *Newport* case involved bad faith actions of municipal officials the Court's inquiry into the history and policy was from that viewpoint. The Court stated that an important public policy consideration underlying the decision was the avoidance of retribution "visited upon the shoulders of blameless or unknowing taxpayers," and then expressly revealed the decision's inapplicability to direct taxpayer involvement in a footnote.

> It is perhaps possible to imagine an extreme situation where the taxpayers are directly responsible for perpetrating an outrageous abuse of constitutional rights. Nothing of that kind is presented by this case. Moreover, such an occurrence is sufficiently unlikely that we need not anticipate it here.

City of Newport v. Fact Concerts, Inc., 49 U.S.L.W. at 4865 n.29.

The "odious," "deliberate and remarkably overt display of racial discrimination" was an outrageous abuse of constitutional rights perpetrated directly by the taxpayers of the water district. That important difference brings this case beyond the application of *Newport*. A municipal corporation's liability for punitive damages for the direct actions of its taxpayers is not inconsistent with the 19th century case law relied upon by the Court in *Newport* because that case law involved only the common situation in which municipal liability

was sought to be imposed on the basis of *respondeat superior* and not the more unusual situation where the violation is committed through direct taxpayer action. *City of Newport v. Fact Concerts, Inc.*, 49 U.S.L.W. at 4867 n.2 (dissent of Mr. Justice Brennan).

That the water district's liability is founded upon § 1981 as well as § 1983 is also a factor which takes this case beyond the considerations involved in *Newport*. The operative language of § 1981 is traceable to the Act of April 9, 1866, c. 31, § 1, 14 Stat. 27 and was to be " 'enforced according to the provisions' " of the 1866 Act. *Tillman v. Wheaton-Haven Recreation Association, Inc.*, 410 U.S. 431, 439, 440 (1973). At the time the 1866 Act was passed, there was established case law holding municipal corporations liable for punitive damages in circumstances involving merely gross negligence. *Whipple v. Walpole*, 10 N.H. 130, 132-33 (1839); *Wheeler v. Troy*, 20 N.H. 77 (1849). By the time § 1983's predecessor, the Civil Rights Act of 1871 passed, *Whipple* had been overruled, *Woodman v. Nottingham*, 49 N.H. 387 (1870), and several other cases had been decided rejecting such liability, *City of Chicago v. Martin*, 49 Ill. 241 (1868); *Herfurth v. Corporation of Washington*, 6 Dist. Col. 288 (1868); *City of Chicago v. Langlass*, 52 Ill. 256 (1869). For the reason that municipal immunity for punitive damages was not yet established at common law when the Act of 1866 was passed, "the familiar assumption that 'Congress would have specifically so provided had it wished to abolish the doctrine,' " *City of Newport v. Fact Concerts, Inc.*, 49 U.S.L.W. at 4864, would have no application to § 1981 as it does to the later enacted § 1983. Unlike the legislative history of the 1871 Act, there was no Sherman amendment proposed to the 1866 Act from which a congressional intent to limit awards to compensatory damages can be gleaned. On the contrary, the legislative history of the

1866 Act reveals that its proponents intended the strongest available means for its enforcement.[1]

Although the issue of outrageous abuses of constitutional rights perpetrated directly by taxpayers was not disposed of by the *Newport* decision, it remains an extreme situation and a sufficiently unlikely occurrence that its settlement by this Court is of relative unimportance to the public as distinguished from the parties. *Layne & Bowler Corp. v. Western Well Works, Inc.*, 261 U.S. 387 (1923). The usual municipal housing decision, where racial discrimination is most imaginable, is made by public officials or boards and not through the

[1] In addition to imposing civil and criminal liability, the Act of 1866 adopted the language and framework of the former fugitive slave law of 1850, a law which had been denounced in its enforcement characteristics as unjust and dangerous. Cong. Globe, 39th Cong., 1st Sess. 601. The Act provided for enforcement by special commissioners who were empowered to call to their aid bystanders or *posse comitatus* as well as the United States land forces, navy and militia. It also provided that officers who refused to execute its process were liable to pay $1000 in liquidated damages to the person whose rights were deprived. Act of April 9, 1866, c. 31, § 5, 14 Stat. 27. After he vetoed the original bill, President Andrew Johnson returned it to the Senate with his written objections. Globe 1679-81. One of the provisions objected to was § 2 which, in his view, deprived state legislators of their traditional immunity by making them liable as an official offense should they vote for laws conflicting with the rights secured by the bill. Globe 1680. Senator Trumbull, the bill's author and one of its strongest supporters, responded by stating that it was not the mere making of the law that was to be punished but it was the doing of any act that deprives another of a right he is entitled to or subjects another to some punishment he ought not to bear. He asserted that the invasion of legislative immunity was essential to combat the widespread enactment and enforcement of black code legislation in southern states. Globe 1758-59. He assured the Senate that the bill "in no manner interferes with the municipal regulations of any state which protects all alike in their rights of person and property." Globe 1761. The bill was passed over the president's veto by a two-thirds vote in the Senate on April 6, 1866 and in the House on April 9, 1866.

deliberations of the taxpayers themselves. The direct taxpayer action issue possesses "such 'isolated significance,' in comparison with its difficulties," that the petition should not be granted. Dissent of Mr. Justice Harlan in *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 480 (1968).

The petitioner seeks review of the issue of corporate standing to sue under §§ 1981 and 1983. Although a standing issue was raised below and addressed in both the district court and the court of appeals, the issue raised and considered was not whether a corporation as such had standing but whether a plaintiff who was not a member of the target class had standing. The petitioner should not be permitted to raise the corporate standing issue here for the first time. *United States v. Lovasco*, 431 U.S. 783, 788 n.7 (1977). The petitioner maintains that the target class membership issue was wrongly decided by the court of appeals by an unwarranted extension of *Sullivan v. Little Hunting Park, Inc.*, 396 U.S. 229 (1969). It asserts that this case is distinguishable from *Sullivan* on the facts because in this case "there is no evidence that the rights of minorities were in fact injured." Petition p. 7. However, the record shows that because of the water district's racial discrimination the development of the thirty houses was delayed for two years and that the price was increased an average of $8,200.00 per house. It is argued that because a black family actually purchased one of the thirty houses, the water district's improper purpose was thwarted and did not cause injury to blacks. This argument does not follow because we cannot be certain that more blacks would not have purchased houses had the price not gone up; had the houses gone on the market earlier; and had there been no antagonistic racial slurs to drive them away. *Tillman v. Wheaton-Haven Recreation Association, Inc.*, 410 U.S. 431, 437 (1973). Nor can the petitioner prove lack of injury by arguing that the twenty-nine white purchasers suffered the same delay and increased

cost. The impact was disproportionately greater on blacks than whites because the black purchasers of other houses in Seekonk could not have been greater than the total population ratio of fifteen out of 13,500 while the black purchasers of Heritage houses were one out of thirty. There was evidence that the water district's racial discrimination completely prevented Heritage from developing its 114 back lots. Had these lots been developed at least three additional black sales would have resulted. Punishing developers for selling to blacks injures blacks by restricting their housing opportunities and stigmatizing them with the official view that they, being inferior, are unfit to share the public water supply with whites. Moreover, the standing issue under § 1981 cannot be reached without first disposing of the § 1983 and Fourteenth Amendment claims where standing cannot be seriously disputed. *Adickes v. Kress & Co.*, 398 U.S. 144, 150-152 (1970).

The petitioner overstates its third question presented by omitting the all-important fact that the racially discriminatory action was taken by the taxpayers pursuant to the provision of the water district's incorporating statute which places the inclusion question specifically and exclusively in their hands. Mass. Acts of 1945, c. 381, § 13. Short of the affirmative vote of a majority of the voters present and voting at a duly called meeting there is no other method by which land can be added to the water district. It was the racially discriminatory exercise of that corporate power that gives the water district liability under *Monell*. The petitioner's argument attempts to divorce the water district from the voters. However, the statute provides that the "inhabitants of the Town of Seekonk liable to taxation in said town and residing within the territory" are the corporation. Mass. Acts of 1945, c. 381, § 1. As the court of appeals found, the term voters "indisputably means legal voters of the Town of Seekonk who are 'inhabitants of the Town of Seekonk liable to taxation in

said town and residing within the territory' of the District." *Des Vergnes v. Seekonk Water District*, 601 F. 2d 9, 15 (1st Cir. 1979) (Petitioner's Appendix p. 26a).

The petitioner further suggests that there may be some unexplained First Amendment or "speech and debate" immunity which would relieve the water district from liability for the actions of the voters. Any such immunity would apply to the individual voters and not the water district. In his concurring opinion in *Tenney v. Brandhove*, 341 U.S. 367, 379 (1951), Mr. Justice Black explained what was not decided by that case: "It is not held that the validity of legislative action is coextensive with the personal immunity of the legislators." Legislative action is not immune from motivational inquiry. Although it is usually accorded a great deal of judicial deference, when there is proof of racial discrimination such deference is no longer justified. *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 265-66 (1977). Moreover, if such individual immunity does apply to the voters, there would be all the more reason for justifying punitive damages against the water district because the other and "more effective means of deterrence," *City of Newport v. Fact Concerts, Inc.*, 49 U.S.L.W. at 4864, would be absent.

Contrary to petitioner's suggestion, the issue of whether *Monell* is a candidate for non-retroactive treatment under *Chevron Oil Co. v. Huson*, 404 U.S. 97, 105-07 (1971) is not likely to be reached in this case. Heritage's recovery against the water district is founded upon § 1981 as well as § 1983. *Monell* overruled *Monroe v. Pape*, 365 U.S. 167 (1961) which had held that a municipal corporation was not subject to suit as a "person" within the meaning of § 1983. Not only is the word "person" absent from § 1981 but the two sections are derived from different acts of congress, each with its own peculiar legislative history. Even after *Monroe*, it was widely

held in the circuits that municipal corporations had liability under § 1981. *Sethy v. Alameda County Water District*, 545 F. 2d 1157, 1159-61 (9th Cir. 1976); *Mahone v. Waddle*, 564 F. 2d 1018, 1030-31 (3d Cir. 1977); *Garner v. Giarrusso*, 571 F. 2d 1330, 1339-40 (5th Cir. 1978). Municipal liability under § 1981 was also suggested by this Court's discussion of the all-inclusive reach of the Act of 1866 in *District of Columbia v. Carter*, 409 U.S. 418, 422 (1973). The water district was liable for its acts at the time it committed them and any liability resulting from *Monell* was just more of the same.

Conclusion.

Although the *Newport* decision disposed of the important issues of wide application involved in the question of punitive damage liability of municipalities, it did not reach the very narrow and unique issue of direct taxpayer action presented by this case making summary reversal inappropriate. Because the constitutional and statutory complexities of the issues presented by this case are disproportionately great in comparison to their public significance, certiorari should be denied.

Respectfully submitted,

STEPHEN D. CLAPP,
ARMSTRONG, POLLIS AND CLAPP,
52 North Washington Street,
North Attleborough, Massachusetts 02760.
(617) 695-3554

Appendix.

UNITED STATES CONSTITUTION, THIRTEENTH AMENDMENT

Section 1. Neither slavery nor involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

UNITED STATES CONSTITUTION, FOURTEENTH AMENDMENT [in pertinent part]

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

• • •

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

42 U.S.C. § 1981

§ 1981. [Equal rights under the law]

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white

citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

R.S. § 1977.

42 U.S.C. § 1983

§ 1983. [Civil action for deprivation of rights]

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

R.S. § 1979.

Mass. Acts of 1945, c. 381

Chap. 381 AN ACT ESTABLISHING THE SEEKONK WATER DISTRICT OF SEEKONK.

Be it enacted, etc., as follows:

SECTION 1. The inhabitants of the town of Seekonk liable to taxation in said town and residing within the territory comprised within the following boundaries, to wit: Beginning at a point where the town boundaries between Pawtucket, Rhode Island, Seekonk and Attleboro, Massachusetts. — Seekonk intersect at the extreme northwest portion of Seekonk, thence southerly 7.3 miles along the boundary between Pawtucket and East Providence in Rhode Island and Seekonk to a point 1,000 feet south of Highland avenue: thence running southeasterly 4,400 feet parallel to Highland avenue to the center line of Mink street; thence southeasterly 4,000 feet to the center line of Warren avenue at a point approximately

400 feet south of Fall River avenue; thence southeasterly 2,200 feet to a point opposite the easterly line of Wheaton street, and 200 feet south of Fall River avenue; thence 450 feet northeasterly along the east line of Wheaton avenue; thence northwesterly 3,200 feet to the center line of Anthony street at a point 400 feet north of Fall River avenue; thence northwesterly 6,200 feet to the center line of Cole street, at a point 250 feet east of Fall River avenue; thence northeasterly 3,500 feet to the center line of County street at a point 1,700 feet west of Olney street; thence 3,200 feet to the center line of Arcade avenue at a point 1,300 feet northeast of the intersection of Fall River avenue; thence northeasterly 5,500 feet to the center line of Elm street at a point 550 feet south of Taunton avenue; thence easterly 5,850 feet to the town boundary between Rehoboth and Seekonk at a point 250 feet south of Taunton avenue; thence due north 2,700 feet along the Rehoboth-Seekonk boundary to a point 300 feet north of Jacobs street; thence southwesterly 2,900 feet to a point 300 feet east of Prospect street and 550 feet north of the intersection of Lincoln and Jacobs streets; thence northerly 1,800 feet parallel to Prospect street; thence southwesterly 600 feet, crossing Prospect street at a point 1,300 feet south of Walnut street; thence southerly 2,200 feet parallel with Prospect street; thence westerly 2,300 feet to the center line of Greenwood avenue at a point 300 feet north of Ledge road; thence due north 1,400 feet; thence northwesterly 3,900 feet to the center line of Woodward avenue at a point 2,100 feet east of Coolidge street; thence northerly 2,850 feet to the center line of Walker street at a point 1,800 feet west of Prospect street; thence northerly 1,300 feet to the center line of Read street at a point 1,800 feet east of Newman avenue; thence northerly 3,300 feet to the center line of Brown avenue at a point 1,850 feet northeast of Newman avenue; thence northerly 6,700 feet to the center line of Pine street at a point 350 feet north of Woodland avenue; thence northeast-

erly 6,400 feet parallel to the east boundary line of New York, New Haven and Hartford Railroad property to the boundary between Seekonk and Attleboro at a point 3,200 feet west of northeast corner boundary of Seekonk, Rehoboth and Attleboro; thence westerly 7,400 feet along the boundary between Seekonk and Attleboro to the point of beginning, shall constitute a water district and are hereby made a body corporate by the name of the Seekonk Water District, hereinafter called the district, for the purpose of supplying themselves with water for the extinguishment of fires and for domestic and other purposes, with power to establish fountains and hydrants, and to relocate and discontinue the same, to regulate the use of such water, and to fix and collect rates to be paid therefor, to assess and raise taxes as provided herein for the payment of such services, and to defray the necessary expenses of carrying on the business of said district, but subject to all general laws now or hereafter in force relating to such districts, except as otherwise provided herein. Said district shall have power to prosecute and defend all actions relating to its property and affairs.

SECTION 2. For the purposes aforesaid, the district, acting by and through its board of water commissioners hereinafter provided for, may contract with any municipality, acting through its water department, or with any water company, or with any other water district, for whatever water may be required, authority to furnish the same being hereby granted, and may enter into such other contracts as may be necessary for the purposes set forth in section one of this act and may take by eminent domain, under chapter seventy-nine or chapter eighty A of the General Laws, or acquire by lease, purchase or otherwise, and hold, the waters, or any portion thereof, of any pond, spring or stream, or of any ground sources of supply, by means of driven, artesian or other wells, within said town of Seekonk not already appropriated for the

purposes of a public water supply, and the water rights connected with any such water sources; and for said purposes may take as aforesaid, or acquire by purchase or otherwise, and hold, all lands, rights of way and other easements necessary for collecting, storing, holding, purifying and preserving the purity of the water and for conveying the same to any part of said district; provided, that no source of water supply or lands necessary for preserving the quality of the water shall be so taken or used without first obtaining the advice and approval of the state department of public health, and that the location and arrangement of all dams, reservoirs, wells, pumping, purification and filtration plants and such other works as may be necessary in carrying out the provisions of this act shall be subject to the approval of said department. The district may construct and maintain on the lands acquired and held under this act proper dams, wells, springs, reservoirs, standpipes, tanks, pumping plants, buildings, fixtures and other structures, including also the establishment and maintenance of filter beds and purification works or systems, and may make excavations, procure and operate machinery and provide such other means and appliances, and do such other things as may be necessary for the establishment and maintenance of complete and effective water works; and for that purpose may construct pipe lines, wells and reservoirs and establish pumping works, and may construct, lay, acquire and maintain aqueducts, conduits, pipes and other works under or over any land, water courses, railroads, railways and public or other ways, and along such ways, in said town, in such manner as not unnecessarily to obstruct the same; and for the purposes of constructing, laying, maintaining, operating and repairing such aqueducts, conduits, pipes and other works, and for all proper purposes of this act, the district may dig up or raise and embank any such lands, highways or other ways in such manner as to cause the least hin-

drance to public travel on such ways; provided, that the manner in which all things are done upon any such way shall be subject to the direction of the selectmen of said town. The district shall not enter upon, or construct or lay any aqueduct, conduit, pipe or other works within, the location of any railroad corporation except at such time and in such manner as it may agree upon with such corporation, or, in case of failure so to agree, as may be approved by the department of public utilities. Said district may enter upon any lands for the purpose of making surveys, test wells or pits and borings, and may take or otherwise acquire the right to occupy temporarily any lands necessary for the construction of any work or for any other purpose authorized by this act.

SECTION 3. Any person sustaining damages in his property by any taking under this act or any other thing done under authority thereof may recover such damages from the district under said chapter seventy-nine or said chapter eighty A; but the right to damages for the taking of any water, water right or water source, or for any injury thereto, shall not vest until water is actually withdrawn or diverted under authority of this act.

SECTION 4. For the purpose of paying the necessary expenses and liabilities incurred under this act, other than expenses of maintenance and operation, the district may borrow from time to time such sums as may be necessary, not exceeding, in the aggregate, three hundred and seventy-five thousand dollars; and may issue bonds or notes therefor which shall bear on their face the words, Seekonk Water District Loan, Act of 1945. Each authorized issue shall constitute a separate loan, and such loans shall be payable in not more than thirty years from their dates. Indebtedness incurred under this act shall be subject to the provisions of chapter forty-four of the General Laws pertaining to such districts.

SECTION 5. The district shall, at the time of authorizing said loan or loans, provide for the payment thereof in accordance with section four of this act; and when a vote to that effect has been passed, a sum which, with the income derived from water rates, will be sufficient to pay the annual expense of operating its water works and the interest as it accrues on the bonds or notes issued as aforesaid by the district, and to make such payments on the principal as may be required under the provisions of this act, shall without further vote be assessed upon the district by the assessors of said town annually thereafter until the debt incurred by said loan or loans is extinguished.

SECTION 6. Any land taken or acquired under this act shall be managed, improved and controlled by the board of water commissioners hereinafter provided for, in such manner as they shall deem for the best interest of the district. All authority vested in said board by this section shall be subject to the provisions of section nine.

SECTION 7. Whenever a tax is duly voted by the district for the purposes of this act, the clerk shall send a certified copy of the vote to the assessors of said town, who shall assess the same on property within the district in the same manner in all respects in which town taxes are required by law to be assessed; provided, that no estate shall be subject to any tax assessed on account of the system of water supply under this act if, in the judgment of the board of water commissioners hereinafter provided for, after a hearing due notice whereof shall have been given, such estate is so situated that it can receive no aid in the extinguishment of fire from the said system of water supply, or receive no benefit in fire insurance grading therefrom, or both, or if such estate is so situated that the buildings thereon, or the buildings that might be constructed thereon, could not be supplied in any ordinary or reasonable manner with water from the said system; but all

other estates in the district shall be deemed to be benefited and shall be subject to such tax. A certified list of the estates exempt from taxation under the provisions of this section shall annually be sent by said board of water commissioners to said assessors, at the same time at which the clerk shall send a certified copy of the vote as aforesaid. The assessment shall be committed to the town collector, who shall collect said tax in the manner provided by law for the collection of town taxes, and shall deposit the proceeds thereof with the district treasurer for the use and benefit of the district. The district may collect interest on overdue taxes in the manner in which interest is authorized to be collected on town taxes.

SECTION 8. Any meeting of the voters of the territory included within the boundaries set forth in section one to be held prior to the acceptance of this act, and any meeting of the voters of the district to be held prior to the qualification of a majority of the water commissioners, shall be called, on petition of ten or more legal voters therein, by a warrant from the selectmen of said town, or from a justice of the peace, directed to one of the petitioners, requiring him to give notice of the meeting by posting copies of the warrant in two or more public places in the district seven days at least before the time of the meeting. Such justice of the peace, or one of the selectmen, shall preside at such meeting until a clerk is chosen and sworn, and the clerk shall preside until a moderator is chosen. At any meeting held hereunder prior to the acceptance of this act, after the choice of a moderator for the meeting the question of the acceptance of this act shall be submitted to the voters, and if it is accepted by a majority of the voters present and voting thereon it shall thereupon take effect, and the meeting may then proceed to act on the other articles in the warrant. After the qualification of a majority of the water commissioners, meetings of the district shall be called by warrant under their hands, unless some other method be provided by by-law or vote of the district.

SECTION 9. The district shall, after the acceptance of this act as aforesaid, elect by ballot, either at the same meeting at which this act shall have been accepted, or thereafter, at an annual meeting or at a special meeting called for the purpose, three persons, inhabitants of and voters in said district, to hold office, one until the expiration of three years, one until the expiration of two years, and one until the expiration of one year, from the day of the next succeeding annual district meeting, to constitute a board of water commissioners; and at every annual district meeting following such next succeeding annual district meeting one such commissioner shall be elected by ballot for the term of three years. The date of the next annual meeting shall be fixed by by-law or by vote of the board of water commissioners, but in no event shall it be later than fifteen months subsequent to the date on which the water commissioners were first elected. All the authority granted to said district by this act, except sections four and five, and not otherwise specifically provided for, shall be vested in said board of water commissioners, who shall be subject, however, to such instructions, rules and regulations as the district may by vote impose. At the meeting at which said water commissioners are first elected and at each annual district meeting held thereafter, the district shall elect by ballot, each for a term of one year, a clerk and a treasurer of the district. The treasurer shall not be a water commissioner, and shall give bond to the district in such an amount as may be approved by said water commissioners and with a surety company authorized to transact business in the commonwealth as surety. A majority of said water commissioners shall constitute a quorum for the transaction of business. Any vacancy occurring in said board from any cause may be filled for the remainder of the unexpired term by said district at any legal meeting called for the purpose. No money shall be drawn from the treasury of the district on account of its

water works except upon a written order of said water commissioners or a majority of them.

SECTION 10. Said board of water commissioners shall fix just and equitable prices and rates for the use of water, and shall prescribe the time and manner of payment. The income of the water works shall be appropriated to defray all operating expenses, interest charges and payments on the principal as they shall accrue upon any bonds or notes issued under authority of this act. If there should be a net surplus remaining after providing for the aforesaid charges, it may be appropriated for such new construction as said water commissioners may recommend, and in case a surplus should remain after payment for such new construction the water rates shall be reduced proportionately. Said water commissioners shall annually, and as often as the district may require, render a report upon the condition of the works under their charge, and an account of their doings, including an account of receipts and expenditures.

SECTION 11. The district may adopt by-laws prescribing by whom and how meetings of the district may be called, notified and conducted; and, upon the application of ten or more legal voters in the district, meetings may also be called by warrant as provided in section eight. The district may also establish rules and regulations for the management of its water works, not inconsistent with this act or with any other provision of law, and may choose such other officers not provided for in this act as it may deem necessary or proper.

SECTION 12. Whoever wilfully or wantonly corrupts, pollutes or diverts any water obtained or supplied under this act, or wilfully or wantonly injures any reservoir, well, standpipe, aqueduct, pipe or other property owned or used by the district for any of the purposes of this act, shall forfeit and pay to the district three times the amount of damages assessed therefor, to be recovered in an action of tort, and upon con-

viction of any of the above wilful or wanton acts shall be punished by a fine of not more than three hundred dollars or by imprisonment in jail for not more than one year, or both.

SECTION 13. Upon a petition in writing addressed to said board of water commissioners requesting that certain real estate, accurately described therein, located in said town and abutting on said district and not otherwise served by a public water supply be included within the limits thereof, and signed by the owners of such real estate, or a major portion of such real estate, said water commissioners shall cause a duly warned meeting of the district to be called, at which meeting the voters may vote on the question of including said real estate within the district. If a majority of the voters present and voting thereon vote in the affirmative the district clerk shall within ten days file with the town clerk of said town and with the state secretary an attested copy of said petition and vote; and thereupon said real estate shall become and be part of the district and shall be holden under this act in the same manner and to the same extent as the real estate described in section one.

SECTION 14. This act shall take full effect upon its acceptance by a majority vote of the voters of the territory included within said district by section one of this act present and voting thereon by the use of a check list at a district meeting called, in accordance with the provisions of section eight, within four years after its passage, but not otherwise.

Approved June 1, 1945.